

**MINUTES  
of the  
FIRST MEETING IN 2015  
of the  
COMMITTEE ON COMPACTS**

**February 24, 2015  
Room 322, State Capitol  
Santa Fe, New Mexico**

The first meeting in 2015 of the Committee on Compacts was called to order by Senator Clemente Sanchez, chair, at 8:43 a.m. on February 24, 2015.

**Present**

Sen. Clemente Sanchez, Chair  
Rep. Sharon Clahchischilliage, Vice Chair  
Sen. Pete Campos  
Rep. Zachary J. Cook  
Sen. Stuart Ingle  
Rep. D. Wonda Johnson  
Rep. Larry A. Larrañaga  
Rep. Georgene Louis  
Rep. James Roger Madalena  
Rep. W. Ken Martinez  
Sen. George K. Munoz  
Sen. Cliff R. Pirtle  
Sen. John C. Ryan  
Sen. William E. Sharer  
Sen. John Arthur Smith

**Absent**

Rep. Tim D. Lewis

**Advisory Members**

Rep. Alonzo Baldonado  
Sen. Carlos R. Cisneros  
Sen. Lee S. Cotter  
Rep. Nate Gentry  
Sen. Phil A. Griego  
Sen. Ron Griggs  
Sen. Richard C. Martinez  
Sen. Mark Moores  
Sen. Mary Kay Papen  
Sen. William H. Payne  
Sen. John Pinto  
Rep. Debbie A. Rodella  
Rep. G. Andres Romero  
Rep. Nick L. Salazar  
Sen. Michael S. Sanchez  
Sen. Benny Shendo, Jr.

Rep. Jane E. Powdrell-Culbert  
Rep. Don L. Tripp  
Rep. Luciano "Lucky" Varela

## **Staff**

John Yaeger, Assistant Director for Legislative Affairs, Legislative Council Service (LCS)  
Peter Kovnat, Staff Attorney, LCS

## **Tuesday, February 24**

Senator Clemente Sanchez welcomed members of the committee and the audience. Committee members introduced themselves.

Senator Clemente Sanchez said that the committee will hear a technical presentation from the governor of New Mexico's negotiating team and then field questions from the voting and advisory members of the committee. At the next meeting, the committee would hear from the tribes that were part of the negotiations that led to this compact and also hear public comment. It is at that meeting that the committee will consider requests for renegotiation between the tribes and the governor's negotiating team.

## **Presentation of Proposed Tribal-State Class III Gaming Compact**

Jessica Hernandez, deputy chief of staff and general counsel, Office of the Governor, and Wade Jackson, general counsel, Economic Development Department, gave a presentation on behalf of the governor's negotiating team. Ms. Hernandez provided a brief history of the class III gaming compact negotiations in New Mexico to provide some context for what led to the compact currently being discussed.

In the proposed 2015 compact, there are four tiers of revenue sharing, and each tier is represented by the four tribes whose compacts will expire on June 30, 2015 and that were a part of these negotiations. Tier 1, for gaming tribes that have under \$20 million in annual revenue, like the Jicarilla Apache Nation, pay a blended rate that works out to about 4% in revenue share to the state. Tier 2, for tribes with \$20 million to \$40 million in annual revenue, was represented by the Pueblo of Acoma. Tier 3, for tribes with \$40 million to \$80 million in annual revenue, was represented by the Mescalero Apache Tribe. Tier 4, for tribes with over \$80 million in annual revenue, was represented by the Navajo Nation. All pay between 8.5% and 10.75% over the course of the compact.

Ms. Hernandez explained that of critical concern to the governor's negotiating team is ensuring responsible gaming and protecting more vulnerable gamblers. To that end, certain protections remain from previous compacts, including the prohibitions on the cashing of government assistance checks, on alcohol on the gaming floor and on people under 21 gaming. In addition, gaming tribes would now participate in the state's self-exclusion program and agree to share more information about anti-compulsive gambling reporting so the state can better understand how that money is being spent and if it is effective.

Another aspect of the proposed 2015 compact is the inclusion of stronger procedures for arbitration in the event that one of the parties is unwilling to enter into the process. Concerning ongoing disputes regarding how free play affects the calculation of net win, the state and the negotiating tribes have agreed to let this compact move forward before settling a past dispute

over free play.

Ms. Hernandez noted that there were three issues that were important to the negotiating tribes and where the proposed 2015 compact differs from previous class III gaming compacts: (1) the extension of credit; (2) the hours of operation; and (3) discretionary comps. Under the proposed compact, casinos will be able to extend credit to individuals who can show that they have the cash balance to cover the amount of the loan, provided that the person has an annual income of over \$200,000, or over \$300,000 for a couple, and the loan must be for at least \$10,000 and must be repaid within 30 days. Ms. Hernandez said that the \$10,000 floor is important because that number triggers federal reporting requirements and thus has an extra level of security. This issue is especially important to the tribes that seek to attract high rollers from out of state.

Under this compact, tribal casinos could remain open 24 hours a day, seven days a week. Currently, tribal casinos must close for at least four hours a day Monday through Thursday, except on federal holidays. Some casinos, however, reported that they do not plan to operate for additional hours.

If it goes into effect, this compact would for the first time allow tribal casinos to provide their patrons with discretionary comps, and not just those benefits accrued as a part of player's clubs.

Finally, Ms. Hernandez discussed the number of gaming facilities that would be allowed under the proposed 2015 compact. Under the 2001 compact, there was no limit on the number of gaming facilities that were allowed. Under the proposed 2015 compact, tribes would be limited to two casinos, with two exceptions. For a tribe with more than 75,000 enrolled members in the state, the tribe could build another casino in six years. In addition, if a tribe has a third gaming facility operating on June 30, 2015, the tribe can keep that facility open, and that facility is deemed a legacy gaming facility. However, legacy gaming facilities can have no more than 130 gaming machines and are allowed a one-time move of up to 17 miles, unless the legacy facility is already within 50 miles of another tribe's casino.

Ms. Hernandez urged the committee to move quickly to approve this compact because the deadline is four months away. She then stood for questions.

In response to a question regarding the current state of affairs of gaming at the Pueblo of Pojoaque and for the Fort Sill Apache Tribe, Ms. Hernandez provided an overview. Relating to Pojoaque, she said there have been some recent negotiations, and the two sides remain far apart. The Pueblo of Pojoaque wants no exclusivity and no revenue sharing. Ms. Hernandez said that all of the tribes that negotiated gaming with the state in 2001 and 2007 agreed to statewide exclusivity, and that includes the Pueblo of Pojoaque. If the Pueblo of Pojoaque were able to opt out of paying revenue sharing based on exclusivity, it would be provided with an advantage over the other gaming tribes.

Ms. Hernandez said that Fort Sill did not ask to participate in this negotiation and that the tribe can always negotiate with the state once it gets federal approval to game on land acquired by the tribe after the October 17, 1988 enactment of the federal Indian Gaming Regulatory Act.

A legislator said that gaming tribes provide a lot of money to the state, but little information is provided on how that money is spent. This compact increases the reporting requirements for tribes to inform the state how each gaming tribe is using its gaming-derived money, and that seems unequal. The legislator stated that the state has a responsibility to tell tribes how it spends the money it receives from them.

In response to a committee member's question, Ms. Hernandez cited some differences between the proposed 2015 compact and the proposed 2014 compact between the state and the Navajo Nation. She said the 2014 compact was designed to work just for the Navajo Nation while the proposed 2015 compact is a much more complete document because it addresses the divergent needs of tribes and gaming operations that vary in size and because it represents a consensus reached among a number of negotiating parties. Ms. Hernandez said that, except for the Pueblo of Pojoaque, all New Mexico Indian tribes, pueblos and nations support this compact. In fact, she added, this compact includes things that the Pueblo of Pojoaque has asked for in the past because it was negotiated with the idea that the Pueblo of Pojoaque might still sign onto it. Ms. Hernandez said that the proposed 2015 compact, as compared to the proposed 2014 Navajo Nation compact, has increased accountability, the availability of limited comps, the extension of credit and an allowance for fewer additional gaming facilities.

A committee member asked about the 17-mile radius limit for legacy casinos and expressed concerns on the possible impact of that on the racinos. Ms. Hernandez said that the two instances where that issue initially raised concerns have been addressed. She understands that SunRay Park and Casino is not concerned about the Navajo Nation moving its legacy casino closer to SunRay because it would also mean moving it closer to another Navajo Nation casino.

According to Ms. Hernandez, the Mescalero Apache Tribe is considering three different locations for its legacy casino, none of which would be any closer to the Ruidoso Downs Race Track and Billy the Kid Casino than two gaming facilities currently operated by the Mescalero: the Inn of the Mountain Gods and the Casino Apache Travel Center.

Of concern to some committee members is the impact the compact would have on the racinos. While racinos pay 26.25% of their net take to the state, the tribes by and large pay between 8% and 10%. The proposed 2015 compact would be even more favorable to the tribes, and that would further tilt the playing field in favor of the gaming industry. Mr. Jackson said that the Economic Development Department, and the tribes individually, have tried to assess that, and while there are a number of variables at play, there has been an attempt to include protections to protect the revenue stream for nontribal gaming.

When asked about possible legislation to provide parity for racinos, Ms. Hernandez said that the hours of operation or the number of gaming machines would be hard to address via legislation because they are part of the bargained-for exclusivity. However, comps, the extension

of credit, a more favorable free-play calculation or a lower tax rate would not affect exclusivity. Tom Fair, director, Audit and Compliance Division, Gaming Control Board, discussed in broad strokes how much racinos, as a group, give away annually in free play.

When asked why the racinos were not involved in the negotiations for this compact, Ms. Hernandez said that they never asked to be. Despite that, negotiations were done keeping the racinos' interests in mind. However, she said, the premise behind exclusivity is to provide a market advantage in exchange for revenue sharing, so parity will never be achieved. When asked if the state could lower regulatory costs on the racinos, Mr. Jackson said it could not because the state regulates the racinos, whereas the tribes regulate themselves.

A committee member said that when the gaming industry sprung up in New Mexico, the racinos agreed to a 26% tax in an effort to save the horse racing industry. The tribes agreed to revenue sharing of 8% to 9% to provide for more economic autonomy. The New Mexico state lottery was created to provide revenue to the state. Now all of these entities are in trouble, the market is saturated and it is unclear how a balance can be struck. In addition, while the Navajo Nation was not part of the original negotiations over class III tribal gaming, this change affects everyone in the gaming industry profoundly.

Ms. Hernandez next addressed the number of casinos and said that, currently, there are 23 tribal casinos operating in New Mexico and that if this compact goes into effect and there is full build-out, she estimated there would be four more casinos starting six years from now. Of course, she said, as tribes make decisions about possible expansion, they must take into consideration market forces. She added that the idea of saturation is artificial because the locations of tribal casinos are confined to tribal lands. In her estimation, there are areas with demand, but no opportunity, to add class III gaming.

A number of members expressed concern about the extension of credit and the collection of the associated debt. Ms. Hernandez said that because of the \$10,000 floor for credit and the income requirement, it is unlikely that credit will be extended to residents of New Mexico, and it is aimed to attract out-of-state gamblers. Notably, a bank verification service can be used to confirm that the person has the necessary income to qualify for the extension of credit.

Regarding collectability, Ms. Hernandez said the proposed compact includes provisions that ensure that there are no interest and fees on a loan, that prohibit selling the debt to third-party debt collectors and that require disputes between parties be heard in state court in the state where the borrower lives and decided based on that state's laws.

Of concern to the committee was how the proposed 2015 compact would affect revenue sharing, especially if all the 2007 gaming tribes switch to the 2015 compact. Ms. Hernandez said that there would be an incentive for tribes with lower gaming revenues to switch, and tribes with higher gaming revenues would pay less for the next three years, but for them it would then return to current levels in three years.

One legislator expressed concern for the process itself, and it appears that the time has

come to open the gaming industry up to everyone. Another legislator asked if a nontribal community would be able to stop a legacy casino from opening nearby. Mr. Jackson said it would not be able to stop a tribe from opening a casino on tribal land acquired before the 1988 cutoff date.

D In response to a concern about 24-hour gaming and compulsive gambling, Ms. Hernandez said it is unlikely that the additional hours, if a casino decided to remain open for them, would have much of an impact. Also, she said, the 2015 compact has much better information and reporting about anti-compulsive gambling efforts by the tribes. It was also noted that casinos allowing smoking indoors gives them a competitive advantage over bars and restaurants that cannot offer that. Finally, an issue surfaced regarding the treatment of third parties injured by the tortious action of a visitor to a tribal casino.

Ms. Hernandez clarified that the proposed 2015 compact would not allow for off-reservation gaming by the tribes. For that to happen, a different negotiated compact would be required.

A committee member clarified that unlike racinos, which are private businesses, tribes are sovereign governments and the proposed compact represents a government-to-government agreement. It is important to make clear that tribal profits from gaming are used differently than profits from racinos. The money from tribal gaming goes to the tribal government to provide public services and is not for private profit. Tribal gaming provides a lot of employment opportunity in rural areas. For the proponents of the racinos, the legislator said, their concerns can be addressed by legislation.

Another member reiterated the importance of respecting tribal sovereignty and said that this proposed compact is what the tribes want.

Senator Clemente Sanchez closed the meeting by announcing that the next Committee on Compacts meeting is scheduled for Saturday, February 28, in Room 322 of the State Capitol starting at 10:00 a.m. At that meeting, the tribes will have an opportunity to address the committee, there will be public comment and committee members will be provided an opportunity to propose specific issues in the compact for renegotiation.

There being no further business before the committee, the Committee on Compacts adjourned at 11:27 a.m.